

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 1618 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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KAALUBHAI RAVJIBHAI PANCHALI - Petitioner(s)
Versus
RASNAL K.V.V.K. SEVA SAHAKARI MANDLI LTD. & 1 -
Respondent(s)

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Appearance :

MR AK CLERK for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR JASWANT SHAH, AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/02/2007

ORAL JUDGMENT

1. In the present petition, the petitioner who was
at the relevant time President of one Rasnal

Purchase and Sales Cooperative Society (here-in-after referred to as "the said Society") has challenged a judgement dated 7th November, 1998 passed by the Cooperative Tribunal upholding an order dated 19th November, 1994.

2. Short facts leading to the petition are as follows :

2.1 The said Society had certain disputes with its employees regarding the pay scales. The employees Union had therefore, approached the Conciliation Officer under the Industrial Disputes Act. The society agreed to accept some of the demands of the employees Union and agreed to increase pay scales of the employees from certain back date. Accordingly, the arrears of salaries were paid to the employees. Finding that the decision of the society was not proper, a charge-sheet dated 17th July, 1994 came to be issued against the petitioner and other office bearers of the society. Though there were several charges in the charge-sheet, thrust of the charges is that on part of the society, the officer bearers had agreed to pay higher salary to the employees with retrospective effects and that therefore, they were liable to be proceeded against under Section 93 of the Gujarat Cooperative Societies Act(here-in-after referred to as "the said Act").

2.2 The petitioner and other office bearers denied the charges. The Inquiry Officer however, by order dated 19th November, 1994 held that the funds of the society were misapplied and, therefore, ordered recovery thereof from the office bearers. The petitioner preferred appeal against the said order. The Cooperative Tribunal however, rejected the appeal. Hence the petition.

3. Having heard learned advocates appearing for the parties, I find that though under certain circumstances if it is found that the society funds are misapplied or misappropriated, it is open for the District Registrar to initiate proceedings under Section 93 of the said Act against the officer of the society responsible for such misapplication or misfeasance, in facts of the present case, the orders under challenge cannot be sustained. In the charge-sheet which is produced on record by the learned AGP Shri Jaswant Shah, it has nowhere been stated as to how the society was in error in agreeing to pay higher salary to the employees. In fact, in the ultimate order also that the inquiry officer passed, it is not clear how such action of the society would amount to misapplication of its funds.

4. Since the settlement entered into between the society and its Union was before the

Conciliation Officer, there was presumption of its justness as the Conciliation Officer was statutorily required to apply his mind before accepting such settlement. In that view of the matter, without there being anything more on record, it was not possible for the authorities to conclude that the society funds were misapplied.

5. This is not to suggest that the officers of the society can ignore any Government directives regarding the standards of pay scale, if so prescribed in accordance with law. However, in the present case, nothing has been brought on record to suggest that the petitioner or other officers of the society breached such standards and thereby misapplied the funds of the society.

6. Considering these aspects of the matter, the petition is allowed. The impugned order dated 7th November, 1998 passed by the Cooperative Tribunal is quashed. Rule is made absolute. No order as to costs.

(Akil Kureshi, J.)

(raghu)